



July 10, 2000

Ms. Amy Swann  
General Counsel  
Texas State Board of Examiners of Psychologists  
333 Guadalupe, Suite 2-450  
Austin, Texas 78701

OR2000-2546

Dear Ms. Swann:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 136941.

The Texas State Board of Examiners of Psychologists (the "board") received a request for information relating to a named psychologist, including "disciplinary records, investigations . . . or complaints made with regard to" the psychologist. You inform us that the board has released some information that is responsive to the request.<sup>1</sup> You have submitted and seek

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<sup>1</sup>You have provided for our review correspondence from the board to the requestor dated May 3, 2000. The correspondence indicates that the board released information responsive to the request, except for social security number information. The letter states that "pursuant to § 501.251 of the Texas Occupations Code the Board is prohibited from releasing social security numbers belonging to applicants or licensees." We have reviewed this provision and find that section 501.251 of the Occupations Code does not itself contain any language making such information confidential. *See* Occ. Code § 501.251. We likewise do not find any provision in chapter 501 of the Occupations Code that makes confidential social security number information. Section 501.251 in conjunction with section 51.251 of the Occupations Code, however, does make licensee social security numbers confidential. *See* Occ. Code § 51.251 (Act of May 29, 1999, 76<sup>th</sup> Leg., R.S., ch. 314, § 1, 1999 Tex. Gen. Laws 1218, 1219.) We additionally note that a social security number or "related record" may be excepted from disclosure under section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* You have apparently withheld the social security number information without seeking a decision of this office or otherwise complying with the requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301. As you have withheld the social security number information from the requestor without asking this office for a decision, we assume that you have done so with the consent of the requestor, and that the social security number information therefore is not responsive

to withhold other responsive information compiled by the board in connection with its investigation of complaint number 92-392-5240. You assert that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Section 552.101 of the Act excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This provision encompasses information made confidential by other statutes. Statutory confidentiality under section 552.101 requires express language making the information confidential or providing that it shall not be released to the public. *See* Open Records Decision No. 478 at 2 (1987). You assert that the submitted information is protected from disclosure under section 552.101 in conjunction with section 501.205 of the Occupations Code. Chapter 501 of the Occupations Code codifies the Psychologists' Licensing Act. *See* Occ. Code § 501.001, *et seq.* Section 501.205(a) provides, in relevant part, that "except as provided by Subsection (b), a complaint and investigation concerning a license holder and all information and materials compiled by the board in connection with the complaint and investigation are not subject to . . . disclosure under Chapter 552, Government Code[.]" Occ. Code § 501.205(a)(1). Subsection (b) of section 501.205 provides as follows:

A complaint or investigation subject to Subsection (a) and all information and materials compiled by the board in connection with the complaint may be disclosed to:

- (1) the board and board employees or agents involved in license holder discipline;
- (2) a party to a disciplinary action against the license holder or that party's designated representative;
- (3) a law enforcement agency if required by law;
- (4) a governmental agency, if:
  - (A) the disclosure is required or permitted by law; and
  - (B) the agency obtaining the disclosure protects the identity of any patient whose records are examined; or

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to the request. *See* Gov't Code § 552.222(b) (permitting governmental body to discuss with requestor how the scope of the request might be narrowed, but prohibiting inquiry into the purpose for which the information will be used).

(5) a legislative committee or committee staff directed to make an inquiry regarding state hospitals or schools, by either house of the legislature, the presiding officer of either house of the legislature, or the chairman of the legislative committee if the information or records that identify a patient or client are not released for any purpose unless the patient consents and the records are created by the state hospital or school or its employees.

Occ. Code § 501.205(b).

In this instance, you inform us that the requestor, an attorney, “is not a party to any complaint or their legal representative.” You assert that, “[b]ecause the requestor . . . does not appear to fall into one of the five exceptions,” the information at issue “cannot be released as a matter of law.” Based on your representations, we agree that the submitted information is confidential in this instance pursuant to section 501.205(a)(1) of the Occupations Code. The information therefore must not be released to the requestor pursuant to section 552.101 of the Government Code in conjunction with section 501.205 of the Occupations Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

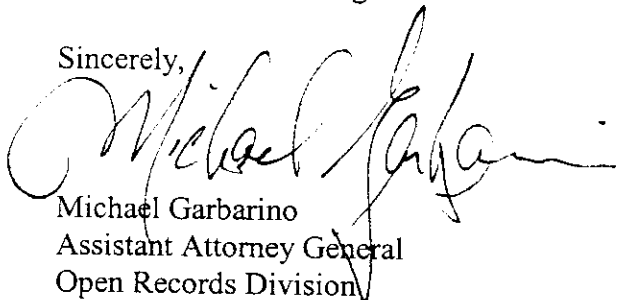
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino  
Assistant Attorney General  
Open Records Division

MG/pr

Ref: ID# 136941

Encl. Submitted documents

cc: Mr. Brandon Boehme (817) 496-9200  
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(w/o enclosures)